

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

SHELBY WILKETT CARSHALL AND)
JACOB CARSHALL, Individually, and as)
Parents and Next of Friend of J. Carshall,)
A minor,)
Plaintiffs,)
vs.) Case No. 17-CV-329-SPS
UNITED STATES OF AMERICA, ex rel.)
Department of Health and Human Services,)
Indian Health Service d/b/a CHOCTAW)
NATION HEALTHCARE CENTER,)
Defendants.)

COMPLAINT

COMES NOW, the Plaintiffs, Shelby Wilkett Carshall and Jacob Carshall, Individually, and as Parents and Next of Friend of J. Carshall, a minor, and for their cause of action against the Defendant, United States of America, ex rel. Department of Health and Human Services, Indian Health Service, d/b/a Choctaw Nation Healthcare Center (hereinafter referred to as "United States of America"), as follows:

PARTIES/JURISDICTION/VENUE

1. Plaintiffs, Shelby Wilkett Carshall and Jacob Carshall, Individually and as Parents and Next of Friend of J. Carshall, a minor, are citizens and residents of Wilburton, Latimer County, State of Oklahoma.

2. This action has been brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346 (b) and 2671, *et seq.* United States of America is the named defendant on behalf of and/or in relation to federal agency, the Department of Health and Human Services, Indian Health Service doing business at the time of the

events giving rise to this action as Choctaw Nation Healthcare Center and its employed health care providers.

3. The acts and/or omissions giving rise to this personal injury/medical malpractice action occurred during Shelby Wilkett Carshall's hospital admission of November 9-11, 2015, at Choctaw Nation Healthcare Center in Talihina, Oklahoma; therefore, jurisdiction and venue are appropriate.

4. An administrative tort claim was filed on February 21, 2017 and subsequently, the administrative tort claim was denied on August 21, 2017.

5. On November 9, 2015, Plaintiff, Shelby Wilkett Carshall, was admitted to the Choctaw Nation Healthcare Center in Talihina, Oklahoma for induction of labor for low amniotic fluid volume. At that time, Plaintiff, Shelby Carshall, was estimated to be more than 42 weeks pregnant.

6. Based on a reasonable medical probability, the fetus was neurologically intact on admission to the hospital.

7. The tracing begins with entirely reassuring features signifying a fetus with normal behavioral responses and absent threat of hypoxia or ischemia. Over time the tracing deteriorates through decelerations and rising baseline rate and finally to obvious tachycardia, markedly decreased variability and injury.

8. This almost 60 hour induction of labor could not be more abnormal. There is essentially no descent of the presenting part and cesarean section will be required to effect delivery of this child.

9. The baby is delivered apneic and dusky with oxygen saturations in the low 50's%. He has "terminal meconium". Resuscitation includes positive pressure ventilation.

10. Physical exam reveals the baby has significant molding and a right parieto-occipital cephalohematoma with erythema.

11. The Defendant breached the standard of care by not properly estimating the fetal weight, despite an ultrasound estimate in excess of the average weight.

12. The Defendant breached the standard of care by its failure to estimate of the feasibility of safe vaginal delivery by any of the medical providers, especially the CNM and the physician, who should have been consulted early about these risk factors.

13. The Defendant breached the standard of care by its failure to recognize and respond to a deteriorating FHR pattern with obvious decelerations, rising baseline, and the periodic insertion of the maternal heart rate during responsibility of both the nurses and the CNM.

14. An injury that was totally preventable with adherence to a reasonable standard of care and reasonable response to clinical information that was, or should have been available to these providers.

15. Defendant, United States of America, through Choctaw Nation Healthcare Center and its employee and/or agent health care providers, owed Plaintiffs a duty to provide reasonable care. The care and treatment by the employee and/or agent health care providers at Choctaw Nation Healthcare Center

fell below the applicable standard of care; therefore, the duty owed to Plaintiffs were breached. Specifically, Defendant inappropriately failed to follow reasonable accepted procedure for safe delivery.

16. The substandard care and treatment of Defendants, through Choctaw Nation Healthcare Center and its employee and/or agent health care providers, was the proximate cause of the injuries to the Plaintiffs.

17. As the direct result of Defendant's negligence, through Choctaw Nation Healthcare Center and its employee and/or agent health care providers, Plaintiffs have incurred and will incur: physical pain and suffering; mental pain and suffering; physical impairment; medical expenses; the probability of future sequelae and/or complications due to their injuries.

WHEREFORE, Plaintiffs pray for judgment against Defendant for actual and compensatory money damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) but no more than the amount requested in Plaintiffs' administrative claims, together with costs and any additional relief that the court deems appropriate.

Respectfully submitted,

By s/ RUSSELL USELTON

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ATTORNEYS' LIEN CLAIMED